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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 Cloud9 Esports, Inc.,

14 Plaintiff,

15 v.

16 UNITED STATES DEPARTMENT OF
17 HOMELAND SECURITY; KEVIN K.
18 MCALEENAN, Acting Secretary,
19 Department of Homeland Security;
20 UNITED STATES CITIZENSHIP AND
21 IMMIGRATION SERVICES;
22 KENNETH T. CUCCINELLI II, Acting
23 Director, United States Citizenship and
24 Immigration Services; KATHY
25 BARAN, Director, California Service
26 Center;

27 Defendants.
28

No.

COMPLAINT

INTRODUCTION

1. Plaintiff Cloud9 Esports, Inc. (“Plaintiff” or “Cloud9”) challenges the unlawful denial of its nonimmigrant petition (WAC-19-101-50788) seeking approval of P-1S classification on behalf of Calle Danielsson (“Mr. Danielsson”) under 8 C.F.R. § 214.2(p)(1)(ii)(A)(2). The denial, which was based solely on the unsupported and erroneous conclusion that Mr. Danielsson's services are not essential to the principal athlete, was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

2. Cloud9 is a North American esports organization that owns and operates several professional video gaming teams that compete at internationally recognized levels. Plaintiff’s teams compete in the North America League Championship Series (“LCS”), Overwatch League, National PUBG League, and Counter-Strike: Global Offensive professional circuit among many other premier esports tournaments. These teams have millions of fans across the world, who Cloud9 engages with through extensive video content creation. This popular video content attracts lucrative corporate sponsors and partners, including organizations such as the United States Air Force, AT&T, BMW, Hewlett-Packard, and Red Bull. Cloud9 currently has 60 employees and raised \$50 million in Series B funding in 2018.

3. As described in its initial petition to U.S. Citizenship and Immigration Services (“USCIS”), Cloud9 seeks to hire an Esports Video Producer to support the performance of the petition’s principal athlete, professional League of Legends player Yasin “Nisqy” Dincer, the team’s starting midlane player. The Esports Video Producer captures, edits, and creates digital media that provides spectators and fans direct access to professional esports players. This type of highly specialized videography facilitates fan engagement which in turn drives publicity for players and revenue for teams. The employment of an experienced and qualified Esports Video Producer is essential to Nisqy’s performance as a professional esports player and critical for the continued success of the Cloud9 organization.

1 4. On January 22, 2019, Cloud9 filed a Petition for Nonimmigrant Worker
2 (Form I-129) with USCIS to classify Mr. Danielsson as a nonimmigrant essential
3 support staff of a P-1A internationally recognized athlete under 8 § CFR
4 214.2(p)(4)(iv).

5 5. On February 5, 2019, USCIS issued a Request for Additional Evidence
6 (“RFE”) for more documentation showing that the position of Esports Video
7 Producer is integral to the performance of the principal athlete; that Calle
8 Danielson possesses the qualifications, critical knowledge, and experience serve as
9 an Esports Video Producer; and that the services could not readily be performed by
10 a U.S. worker.

11 6. On March 6, 2019, Cloud9 responded to USCIS with the requested
12 additional documentation in the form of a signed statement from the principal
13 athlete describing Mr. Danielsson’s essentiality to his performance; Mr.
14 Danielsson’s diploma and transcript evidencing his attainment of a degree in
15 information and media technology with a signed statement from an industry expert
16 affirming Mr. Danielsson’s qualifications; and signed statements from the Chief
17 Operating Officer and Creative Director of Cloud9 confirming the organization’s
18 efforts to hire U.S. workers but inability to find qualified candidates.

19 7. On March 19, 2019, USCIS denied the I-129 petition filed by Cloud9.
20 USCIS denied the petition on the ground that the position of Esports Video
21 Producer does not improve the performance of the principal athlete. USCIS’ denial
22 of the petition is arbitrary and capricious and an abuse of discretion as it
23 fundamentally disregards substantial evidence in the record, and is therefore not in
24 accordance with law.

25 8. Plaintiff seeks an order overturning USCIS’ decision and requiring USCIS to
26 adjudicate and approve the I-129 petition.

27 **PARTIES**

28 9. Plaintiff Cloud9 Esports, Inc. is a Delaware corporation headquartered in Los

1 Angeles, California. Plaintiff's beneficiary, Mr. Danielsson, is a Swedish national
2 and resident of Ludvika, Sweden. Cloud9 has suffered a legal wrong because of
3 Defendants' arbitrary and capricious abuse of discretion and is therefore entitled to
4 judicial review. 8 U.S.C. § 702.

5 10. Defendant U.S. Department of Homeland Security ("DHS") is a federal
6 agency responsible for the administration and enforcement of the immigration and
7 naturalization laws of the United States.

8 11. Defendant Kevin K. McAleenan is the Acting Secretary of DHS. Acting
9 Secretary McAleenan is responsible for the administration and management of
10 DHS, and the enforcement of the immigration laws of the United States. 8 U.S.C. §
11 1103(a); 8 C.F.R. § 2.1. He is sued in his official capacity.

12 12. Defendant USCIS is a component of the DHS, 6 U.S.C. § 271, and an
13 "agency" within the meaning of the Administrative Procedures Act ("APA"), 5
14 U.S.C. § 551(1). USCIS adjudicates petitions for immigration benefits, and denied
15 the nonimmigrant petition Cloud9 filed on behalf of Mr. Danielsson.

16 13. Defendant Kenneth T. Cucinelli is the Acting Director of USCIS. Defendant
17 Cucinelli is responsible for the administration of USCIS and its subordinate
18 employees and agents, as well as the implementation of the immigration laws of the
19 United States, including the adjudication of Cloud9's petition. He is sued in his
20 official capacity.

21 14. Defendant Kathy Baran is the Director of the California Service Center,
22 which is the specific office within USCIS that adjudicated Plaintiff's petition. She
23 is sued in her official capacity.

24 **JURISDICTION AND VENUE**

25 15. Jurisdiction is proper 28 U.S.C. § 1331 (federal question subject matter
26 jurisdiction) and 28 U.S.C. § 1651 (the All Writs Act). The APA, 5 U.S.C. § 701 et
27 seq. applies to this action. This Court also has authority to grant declaratory relief
28 under 28 U.S.C. §§ 2201–02 and injunctive relief under 5 U.S.C. § 702. The United

1 States waives sovereign immunity under 5 U.S.C. § 702.

2 16. Venue is proper in the Central District of California under 28 U.S.C. §
3 1391(e)(1)(C) as a civil action against officers of the United States in their official
4 capacities in the District where Plaintiff resides.

5 **EXHAUSTION OF REMEDIES**

6 17. The March 19, 2019 denial by USCIS of Cloud9's petition constitutes a final
7 agency action under the APA, 5 U.S.C. § 704. Neither INA nor DHS regulations
8 require administrative appeal of the denial.

9 18. Under 5 U.S.C. §§ 702 and 704, Cloud9 has suffered a "legal wrong" and has
10 been "adversely affected or aggrieved" by agency action for which there is no
11 adequate remedy at law.

12 **LEGAL FRAMEWORK**

13 19. Section 101(a)(15)(O)(ii) of the INA provides for the admission of foreign
14 nationals seeking to enter the United States temporarily and solely for the purpose
15 of accompanying and assisting the athletic performance of a foreign national. 8
16 U.S.C. § 1101(a)(15)(O)(ii). This nonimmigrant classification is commonly referred
17 to as "P-1S."

18 20. In pertinent part, the INA provides that a foreign national may enter the
19 United States, "temporarily and solely for the purpose of accompanying and
20 assisting in the . . . athletic performance by a [P-1A foreign national] for a specific
21 event or events; is an integral part of such actual performance; [h]as critical skills
22 and experience with such alien which are not of a general nature and which cannot
23 be performed by other individuals; and has a foreign residence which the alien has
24 no intention of abandoning." 8 U.S.C. § 1101(a)(15)(O)(ii).

25 21. The regulations at 8 C.F.R. § 214.2(p)(4)(iv)(A) require an essential support
26 alien to have a support-relationship with a P-1 athlete, prior essentiality, critical
27 skills, and experience with the principal alien.
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22. 8 C.F.R. § 214.2(p)(3) further defines the qualifications for an essential support alien: "*Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien."

23. In order for a foreign national to receive a P-1S classification, a U.S. employer must file a nonimmigrant visa petition on the foreign national's behalf with USCIS.

24. Upon receipt of a nonimmigrant petition, USCIS may issue a written notice in the form of a request for evidence (RFE) to request additional evidence from petitioner who filed for immigration benefits.

25. The USCIS Adjudicators Field Manual ("AFM") states that an RFE should, "1. identify the eligibility requirement(s) that ha[ve] not been established and why the evidence submitted was not sufficient; 2. identify any missing evidence specifically required by the applicable statute, regulation, or form instruction; 3. identify examples of other evidence that may be submitted to establish eligibility; and 4. request that evidence." AFM 10.5 (Sep. 11, 2018). The RFE should "ask for all of the additional evidence the officer anticipates having to request and state the deadline for response." *Id.*

FACTUAL ALLEGATIONS

26. Mr. Danielsson is a citizen and national of Sweden who currently resides in that country. In June 2014, he completed his education in programming and web development from a licensed vocational institute in Ludvika, Sweden.

27. Mr. Danielsson has provided video editing services for Cloud9 since August

1 2014 as an independent contractor. Since April 2016, Mr. Danielsson has held the
2 position of European Video Editor & Videographer for Cloud9, traveling with their
3 teams to international competitions and producing video content for the
4 organization and principal alien.

5 28. In 2018, Cloud9 sought to employ a video editor and videographer to create
6 video content essential to the success of their esports operations. For this critical
7 position, Cloud9 sought an individual with qualifications such as: the ability to
8 identify current trends in the type of content fans want to see in order to increase
9 viewership and engagement; the ability to compile highly time sensitive video
10 content with an expert understanding of Cloud9's players, teams, and history; and
11 the ability to recall years of Cloud9 gameplay, player actions, and company events.
12 Mark Register, Cloud9's Creative Director, reviewed over 200 applications. Based
13 on his extensive experience he could not identify one applicant with the level of
14 knowledge and experience necessary to succeed in the position.

15 29. In January 2019, Mr. Danielsson accepted an offer of employment by Cloud9
16 to assume the role of Esports Video Producer, effective February 15, 2019. Mr.
17 Danielsson has been working remotely in this capacity, resulting in great personal
18 cost due to the time zone differential and operational cost to Cloud9 because of the
19 inability of an essential employee to render services in the United States.

20 30. On January 22, 2019, Cloud9 filed a Petition for Nonimmigrant Worker
21 (Form I-129) with USCIS to classify Mr. Danielsson as a nonimmigrant essential
22 support staff of a P-1A internationally recognized athlete under 8 § CFR
23 214.2(p)(4)(iv).

24 31. On February 5, 2019, USCIS issued a Request for Additional Evidence
25 ("RFE") for more documentation showing that the position of Esports Video
26 Producer is integral to the performance of the principal athlete; that Mr. Danielsson
27 possesses the qualifications, critical knowledge, and experience to serve as an
28 Esports Video Producer; and that the services could not readily be performed by a

1 U.S. worker. Notably, the RFE did not state that Plaintiff needed to provide further
2 evidence showing Mr. Danielsson “improved” the performance of the principal
3 athlete.

4 32. On March 6, 2019, Cloud9 responded to USCIS with the requested
5 additional documentation in the form of a signed statement from the principal
6 athlete describing the essentiality of an Esports Video Producer to his
7 performance; Mr. Danielsson’s diploma and transcript evidencing his attainment of
8 an engineering degree in programming and web development with a signed
9 statement from an industry expert affirming Mr. Danielsson’s qualifications; and
10 signed statements from the Chief Operating Officer and Creative Director of
11 Cloud9 confirming the organization’s efforts to hire U.S. workers but inability to
12 find qualified candidates.

13 33. On March 19, 2019, USCIS denied the I-129 petition filed by Cloud9 on the
14 basis that the evidence submitted did not show that Mr. Danielsson’s services
15 improved the principal athlete’s skill in playing the game. This marked the first
16 time USCIS raised the issue of whether Mr. Danielsson improves the performance
17 of the principal athlete, as the RFE did not address this particular concern.

18 34. While it is clear that the essential support alien be integral to the athlete's
19 performance, there is not an iota of law, regulation or policy which requires the
20 essential support alien to *improve* the athlete’s skill in the sport; the petitioner need
21 only show by a preponderance that the essential support alien be integral to the
22 principal athlete’s performance.

23 35. Accordingly, a denial based on the petitioner’s failure to show how the
24 essential support alien improves the principal athlete’s skill as an esports player is
25 ultra vires and constitutes improper legislating by the executive branch. If the
26 legislature meant to require that essential support aliens improve the skill of
27 principal athletes, it would have so stated; if USCIS seeks to add this requirement
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1 to existing policy, the agency must engage in the statutorily required notice and
2 comment.

3 36. Further, the rationale given in the denial indicates that the agency blatantly
4 disregarded relevant, probative evidence in the form of testimonial letters from the
5 principal athlete as well as recognized experts in the field. The agency's decision
6 arbitrarily ignores the beneficiary's technical skill and affirmed qualifications in
7 video content creation, which is an integral part of, and essential to, the
8 performance of the principal athlete.

9 37. Additionally, USCIS failed to follow the requirements of the AFM requiring
10 that the RFE ask for all of the additional evidence the officer anticipates having to
11 request. If USCIS erroneously believed that Mr. Danielsson is required to
12 "improve" the performance of the principal athlete, USCIS had an obligation to
13 address the issue in its RFE. USCIS neglected to do so, and instead arbitrarily
14 raised the issue for the first time in its denial. This prevented Plaintiff from
15 addressing USCIS's inaccurate interpretation of the law in its RFE response, and
16 constitutes a clear abuse of agency discretion.

17 38. This denial leaves Cloud9 without the valuable services of an experienced
18 and essential employee. Cloud9's star player relies on Mr. Danielsson to create
19 video content which increases fan engagement. Fan engagement attracts the
20 sponsorships and partnerships that create revenue for players and teams, which
21 ultimately keeps the esports industry alive and growing. Without essential support
22 staff like Mr. Danielsson, user engagement and revenue is diminished,
23 incapacitating the career of professional athletes like Nisqy. This business model is
24 essential to most U.S. esports organizations, creating local jobs and supporting the
25 U.S. economy.

26 39. Defendants have a duty to ensure the fair and faithful execution of the
27 immigration laws and policies of the United States. Defendants have a duty to
28 adjudicate Cloud9's petition in a lawful, fair, and reasonable manner. Defendants

1 have failed to fulfill this duty.

2 40. Defendants have failed to properly supervise their employees, such that the
3 employees fail to follow the statutes, regulations, and agency policies concerning
4 the processing of nonimmigrant benefit petitions, including Plaintiff's petition.

5 41. Under 5 U.S.C. §§ 702 and 704, Cloud9 has suffered a "legal wrong" and has
6 been "adversely affected or aggrieved" by agency action for which there is no
7 adequate remedy at law.

8 **CLAIMS FOR RELIEF**

9 **First Claim**

10 **Administrative Procedure Act Violation (5 U.S.C. § 706)**

11 42. Plaintiff incorporates the allegations set forth in the preceding paragraphs.

12 43. Defendants' denial of the Plaintiff's nonimmigrant petition constitutes final
13 agency action that is arbitrary, capricious, an abuse of discretion, and not in
14 accordance with the law.

15 44. No rational connection exists between the conclusions asserted by USCIS in
16 its denial and the facts in the record.

17 **PRAYER FOR RELIEF**

18 Plaintiff asks this Court to grant the following relief:

- 19 1. Assume jurisdiction over this matter;
 - 20 2. Declare the Defendants' denial of Cloud9's P-1A petition as unlawful;
 - 21 3. Vacate the denial and order Defendants to approve the nonimmigrant
22 petition within 15 calendar days;
 - 23 4. Award reasonable costs and attorneys' fees; and
 - 24 5. Grant such further relief as the Court deems just and proper.
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Respectfully submitted,

ESG LAW

Dated: July 10, 2019



GENIE M. DOI
Counsel for Plaintiff